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FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of

Implementation of the Pay Telephone
Reclassification and Compensation
Provisions of the Telecommunications Act
of 1996

CC Docket No. 96-128

**PETITION OF AMERITECH
FOR RECONSIDERATION OR CLARIFICATION**

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SUMMARY

Ameritech accepts and supports the Commission's order in every major respect. However, the order does not make clear the precise timing of the special preconditions that apply only to Local Exchange Carriers. Many passages allow LECs to receive the new compensation as soon as they are able to comply with the conditions, but a few paragraphs seem to say they must wait until April 15, 1997 — even if by that time they have already met the conditions. Interexchange carriers, of course, are likely to seize upon those few unclear paragraphs as excuses not to pay the new charges until the last minute, contrary to the Congressional mandate. Therefore the Commission should dispel any ambiguity and clarify that April 15, 1997, was not intended to be the *earliest* time the LECs could receive compensation, but the *final* day when the LECs would be *allowed* to comply.

Such a clarification will insure that the implementation of the order proceeds according to the principles that underlie it. Interexchange carriers are required to begin paying the new compensation to other pay telephone owners immediately, and equivalent compensation for LEC pay telephones is being held back *only* because the LECs

already collect payphone costs from interexchange carriers as part of the Carrier Common Line charge that is payable on *all* interstate calls. It follows that as soon as pay telephone costs have been removed from the CCL, as Section 276 mandates, there is no reason why the LECs should have to wait any longer for their new compensation under Section 276 to begin. This is especially significant for Ameritech, which had *already* removed its pay telephone costs from the CCL long *before* the recent order. Indeed, a literal reading that would require LECs to file tariffs to remove payphone costs from the CCL "on" April 15, 1997, would be nonsensical in Ameritech's case, since by then its payphone costs will have already been out of the CCL for nearly a year. Plainly, the Commission meant to say that the costs should be removed "no later than" that date.

Accordingly, the order should be clarified by specifying that the phrase "on April 15, 1997" was meant to mean "no later than April 15, 1997."

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I. Introduction

The Commission's Report and Order released September 20, 1996, in the above-entitled proceeding [hereinafter the "Order"] provides for a sensible and discerning implementation of the Congressional objectives for pay telephones under Section 276 of the Telecommunications Act of 1996. Although Ameritech files the present Petition to seek greater certainty as to the timing of the compensation plan established by the Order, Ameritech accepts and supports the Order in every other respect. In particular, Ameritech is gratified to find that the Commission did not adopt the NPRM's tentative conclusion that no per-call

compensation need be established for presubscribed "0+" calls¹ and pleased that it has allowed BOCs to participate freely in the selection of both interLATA and intraLATA presubscribed carriers at their pay telephones.² These rulings take important steps toward restoring BOC payphones to an equal status with their competitors.

In addition, in providing for the deregulation of the local coin "drop rate," the Commission has recognized that monopoly pricing of pay telephone services may still result from various market failures, particularly locational monopolies.³ The Commission should continue to pay close attention to the issue of exclusive pay telephone arrangements at significant premises. Indeed, the Commission has already

¹ See Order at ¶ 71.

² At one point (Order at ¶ 240), the Commission states that it declines to place any restrictions on the BOCs' ability to "negotiate for the selecting and contracting of intraLATA carriers presubscribed to their payphones." Ameritech suggests that "intraLATA" must be a typographical error at this point and that "interLATA" was intended, since the rest of ¶ 240 deals only with interLATA carrier selection and the subject of intraLATA carrier selection is dealt with separately in ¶¶ 259-262.

³ Thus, as an example of such a market failure, the Commission described the case where the "size of the location with an exclusive PSP contract or the caller's lack of time to identify potential substitute payphones" allows a pay telephone provider "to charge an inflated rate on local calls based on its monopoly" (Order at ¶ 59).

suggested that states should take action in such cases.⁴ Ameritech submits that where the states do not act, the Commission should do so itself. For example, the use of exclusive-dealing pay telephone contracts is widespread, in which a pay telephone owner requires the owner of the premises to promise to exclude all competitors' pay-phones. Such arrangements hinder the operation of the marketplace. The Commission should deal decisively with this problem by declaring that pay telephone owners who continue to do business in this exclusionary manner will not remain eligible to receive the compensation established under Section 276.

Such questions can of course be dealt with in future stages of implementation, and need not be taken up in connection with the September 20 Order. That Order does, however, as already mentioned, need immediate clarification as to the timing of its implementation, which is the primary focus of this Petition.

⁴ "In addition, under our deregulatory, market-based approach, when states have concerns about possible market failures, such as that of pay-phone locations that charge monopoly rates, they are empowered to act by, for example, mandating that additional PSPs be allowed to provide pay-phones, or requiring that the PSP secure its contract through a competitive bidding process that ensures the lowest possible rate for callers." (Order at ¶ 61)

II. LECs May Begin To Collect Flat-Rate Monthly Compensation as Soon as They Are in Compliance.

For everyone except LECs, the compensation plan established by the Order takes effect thirty days after publication in the Federal Register (*i.e.*, the plan will be effective on November 6, 1996). Thus the interim IXC compensation for payphone calls of \$45.85 per phone per month is payable "beginning on the effective date of the rules adopted in this proceeding and ending one year later."⁵ But Paragraph 125 of the Order establishes a special rule for LECs: "PSPs that are affiliated with LECs will not be eligible for this interim compensation until the first day following their reclassification and transfer of payphone equipment along with the termination of subsidies, as discussed below."⁶

It is evident that the reason for this difference is that until now, interexchange carriers have been paying the BOCs' payphone costs as part of the BOC access charges that apply to *all* toll calls (*i.e.*, not just toll calls from payphones), and thus they would seem to be paying twice for the same thing if the new \$45.85 became payable before

⁵ Order at ¶ 119, as amended by the Errata of Sept. 27, 1996.

⁶ Order at ¶ 125, as amended by the Errata of Sept. 27, 1996.

payphone costs had been removed from access charges. However, from this it follows that once those costs have been removed, the \$45.85 should commence immediately.

Paragraph 125 does not refer to any specific date, and thus clearly means that LECs can claim the \$45.85 as soon as subsidies have been removed, *whenever* that might be accomplished. However, Paragraph 370, one of the ordering clauses, unfortunately appears to contradict Paragraph 125 by declaring that the interstate tariff filing necessary to remove payphone costs from interstate access charges must be filed "on January 15, 1997, to be effective April 15, 1997." Similarly, Paragraph 368 states that "local exchange carriers SHALL RECLASSIFY their payphone assets and related expenses to nonregulated status on April 15, 1997."

Ameritech does not believe that the Commission intended Paragraphs 368 and 370 to prevent the BOCs from becoming eligible to receive the \$45.85 sooner than April 15, 1997. As already noted, such a reading conflicts with Paragraph 125, which obviously permits flat-rate compensation to begin earlier.⁷ Furthermore, there is no valid policy

⁷ In addition, Paragraph 370 does not track with Paragraph 183, which says that these tariffs must be filed "no later than" January 15, 1997, rather than *on* that date. Also, in the opening pages, the Commission states that

(Footnote Continued . . .)

reason that would require the LECs to wait until next April 15 if they are able to comply earlier. Section 276 allows the Commission only nine months to "take all actions necessary" to establish the pay telephone compensation plan. In response to the Congressional sense of urgency, the Commission acknowledges in the Order that its goal has been to "provid[e] compensation to PSPs as soon as practicable."⁸ For these reasons it is plain that LEC compensation should begin as soon as possible.

Furthermore, Ameritech's own case shows that the Commission could not possibly have meant to delay the removal of payphone costs from the CCL until April 1997, since Ameritech already removed those costs in May 1996 as part of the initiatives it took in 1995 to reform its payphone rate structure well in advance of the new legislation. On March 5, 1996, pursuant to a waiver of the Part 69 rules,⁹ Ameritech

(Footnote Continued . . .)

the removal of payphone subsidies is being done "as soon as it is practicable," rather than on any specific day. Order at ¶ 4.

⁸ Order at ¶ 126.

⁹ *In re Ameritech Operating Companies Petition for Waiver of Part 69 of the Commission's Rules To Restructure Its Rates To Establish a Pay Telephone Use Fee Rate Element [etc.]*, Order of the Chief, Common Carrier Bureau (released March 1, 1996) [hereinafter cited as "Ameritech Payphone Waiver"].

filed a federal tariff imposing a per-call charge on interexchange carriers for payphone calls and making a corresponding reduction in the interstate access charges paid on all calls.¹⁰ That tariff was allowed to go into effect on May 24, 1996. Ameritech also filed to establish similar pay telephone charges in its five states, proposing corresponding reductions in intrastate carrier access charges where necessary.¹¹

The Ameritech tariffed per-call payphone charge is not the same as the new charges under Section 276.¹² But the steps that were taken by

¹⁰ The restructuring was required to be "revenue neutral," meaning that the revenues realized from the new per-call fee had to be the same as the revenues forgone from the reduction in CCL access charges. See Ameritech Payphone Waiver, *supra* note 9, at ¶ 32, p. 38.

¹¹ In regard to intrastate "subsidies" the Commission says, "We require, pursuant to the mandate of Section 276(b)(1)(B), incumbent LECs to remove from their intrastate rates any charges that recover the costs of payphones. Revised intrastate rates must be effective no later than April 15, 1997. . . . States must determine the intrastate rates elements that must be removed to eliminate any intrastate subsidies within this time frame." (Order, ¶ 186) However, the Commission says elsewhere (¶¶ 50, 60) that for the first year, "states may continue to set the local coin rate in the same manner as they currently do." Ameritech assumes that these provisions are not inconsistent and that the only intrastate "subsidies" that must be removed before April 15, 1997, are those that are unrelated to the local coin rate — in other words, that the subsidies paid by IXC's as part of access charges must be eliminated before the \$45.85 interim compensation takes effect, which of course only makes sense, since it is the IXC's who will be paying the \$45.85.

¹² For one thing, the measuring and billing of the Ameritech charge was done by Ameritech, instead of under an IXC self-reporting system as now required by the Commission in its Order. Moreover, the Ameritech charge was set forth in an individual carrier's tariff, while the payphone compensation

(Footnote Continued . . .)

Ameritech at that time to remove payphone costs from access charges were virtually the same as those now being required of all BOCs as part of the new compensation plan.¹³ Indeed, the main original purpose of the waiver was to allow Ameritech "to remove payphone costs from [its] originating and terminating carrier common line charges and to recover these costs from IXCs on a per-call basis . . .".¹⁴ The reduction in access charges was accomplished as part of the same tariff change that imposed the tariffed per-call payphone charge.

Accordingly, there is no need for Ameritech to make the tariff filing that the order requires to reduce the CCL charge¹⁵ because that step has already been taken. Of course Ameritech *will* need to file a

(Footnote Continued . . .)

rates under Section 276 are being prescribed by the Commission as a uniform rate applicable to all payphone owners.

¹³ The only exception is that in March 1996 Ameritech did not anticipate that the Commission would require the costs of the loops connecting payphones to the network to remain as part of the network; see Order at ¶ 159. Thus the only difference between what Ameritech did in March and the CCL restructure that is now required under the Order is that Ameritech removed *too much* from access charges. In an upcoming tariff filing Ameritech will restore those loop costs to general access charges.

¹⁴ Ameritech Payphone Waiver, *supra* note 9, at ¶ 26, pp. 30-31.

¹⁵ The Order (at ¶ 183) states the requirement in these words: "Therefore, we conclude that incumbent LECs must file revised CCL tariffs with the Common Carrier Bureau no later than January 15, 1997 to reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone costs currently recovered through those charges, scheduled to take effect April 15, 1997."

tariff to remove the existing Ameritech per-call charge to the extent it duplicates the compensation on calls that are included in the \$45.85 flat rate.¹⁶ However, the approval of that tariff will be a merely ministerial act,¹⁷ compared to the complexity of considering a tariff that seeks to remove payphone costs for the first time.¹⁸ Therefore Ameritech intends, when it submits its tariff revision, to ask that that it be made effective upon no more than 45 days' notice, rather than the 90 day review period that seems to be contemplated in the Order.

III. Conclusion

Section 276 allows the Commission only nine months to "take all actions necessary" to establish the pay telephone compensation plan,

¹⁶ As provided in the Order (¶ 125 and App. D, ¶ 3), the \$45.85 is intended to represent compensation for dial-around and "800" calls, while the Ameritech tariffed per-call charge applies to those calls and presubscribed "0+" as well. Accordingly, Ameritech will propose to retain its existing tariffed charge for presubscribed "0+" until the inception of the next stage of the compensation plan, i.e., the 85¢ charge that will apply after inter-exchange carriers develop their tracking capabilities.

¹⁷ In addition this filing will increase access charges slightly to reflect the return of loops to network costs; see note 13, *supra*.

¹⁸ Ameritech's CCL reduction as proposed in March 1996 and allowed in May was required to be "revenue neutral," see note 10 *supra*. Thus there was no incentive on the part of Ameritech to understate the payphone costs to be removed from the CCL, since any such understatement would merely have resulted in a lower per-call payphone charge. Accordingly, the earlier computation should be accepted as accurate for present purposes.

and in response the Commission has sought to "provid[e] compensation to PSPs as soon as practicable." These objectives would be compromised if the Commission's Order is interpreted to require the LECs to bide their time waiting until April 15 even if all the Commission's conditions have already been met. Nevertheless, at least some interexchange carriers will insist on such an over-literal reading of the Order, so the Commission should rule unequivocally that LECs need not wait. This can be easily and simply accomplished by changing "on April 15, 1997" to "no later than April 15, 1997" in Paragraphs 368 and 370 of the Order. Ameritech urges the Commission to make that change.

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